IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 1:07-cr-00090-WYD

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. B&H MAINTENANCE & CONSTRUCTION, INC., a New Mexico corporation;
2. JON PAUL SMITH a/k/a J.P. SMITH; and
3. LANDON R. MARTIN,

Defendants.

UNITED STATES' OPPOSITION TO "DEFENDANT LANDON MARTIN'S MOTION FOR SEVERANCE" (DOCKET # 50)

I. Introduction

Despite a strong "preference in the federal system for joint trials of defendants who are indicted together," *see United States v. Durham*, 139 F.3d 1325, 1333 (10th Cir. 1998) (quoting *Zafiro v. United States*, 506 U.S. 534, 537) (1993)), Defendant Landon Martin has moved this Court to try him separately from his codefendants. (Landon Martin's Mot. for Sev. (Docket # 50).) Because the Indictment properly joined Defendant Martin with his codefendants and because Defendant Martin has failed to show that a joint trial would unfairly prejudice him, the Court should deny his motion. *See* Fed. R. Crim. P. 8(b), 14(a).

II. Facts

The Defendants are charged in a two-count Indictment. Count I charges Landon Martin, Jon Paul Smith, and B&H Maintenance and Construction, Inc., with conspiring to rig bids in violation of 15 U.S.C. § 1. (Indictment Count I.) Count II charges Defendant Smith alone with obstructing the investigation into Count I by tampering with a witness. (Indictment Count II.)

The conspiracy in Count I initially involved Defendant Smith, who was vice president of B&H Maintenance and Construction, Inc., and Kenneth Rains, an executive at a company called Flint Energy Services, Inc.[1] Smith and Rains conspired to rig bids for pipelines projects their companies were submitting to BP America Production Company ("BP America"). *(See* Indictment ¶ 3(d).) Because their two companies were the only competitors for certain BP America projects, Defendant Smith and Rains agreed to divide the work so that B&H would win some bids and Flint would win the others. (Indictment ¶ 3(c).) B&H would provide Rains with the prices it was bidding, and Rains agreed to bid higher than B&H on certain projects and lower on others. Defendant Martin, who was also an employee of B&H, was aware of the conspiracy and joined it no later than September 23, 2005, when he provided B&H's bid numbers to Kenneth Rains at Defendant Smith's request. Sometime in December of 2005, the conspiracy ended (although Defendant Smith did not know it), after a Flint employee reported the illegal activity to Flint executives. Both Rains and Flint have pled guilty to the conspiracy.

Count II charges Defendant Jon Paul Smith alone with obstructing the investigation into

[1]Defendant B&H participated in the conspiracy through the acts of its employee agents, Defendant Smith and Defendant Martin.

Count I by attempting to persuade Kenneth Rains to lie to the grand jury and the FBI about the conspiracy. (Indictment ¶ 19, 20.) After the United States learned of the bid rigging conspiracy, investigators from the FBI and Department of Justice visited Defendant Smith at his home to question him about the conspiracy. At the interview, Defendant Smith denied rigging bids and indicated that he did not know Rains well. At the close of the interview, he was served with a grand jury subpoena. Shortly after the government investigators left his house, Defendant Smith telephoned Kenneth Rains to coordinate their stories so that Rains would tell the same lies to the FBI and grand jury. Defendant Smith relayed to Rains the false statements he had made to the FBI and indicated that the government would never be able to prove the conspiracy. Both Smith and Rains knew that Smith's story was false and Rains understood that Smith was attempting to persuade him to tell the same lies.

III. Argument

Defendant Martin has asked this Court to try him separately from his codefendants because, he says, the witness tampering charge is not properly joined with the conspiracy charge. (Landon Martin's Mot. for Sev. 2-6.) Alternatively, he has asked the Court to try him separately because he will be prejudiced by a joint trial. (Landon Martin's Mot. for Sev. 6-10.) For the reasons stated below, both arguments fail.

A. Joinder Under Rule 8(b)

1. Charges against all three Defendants are properly joined under Rule 8(b) because all counts share "common evidence."

An indictment may join multiple defendants "if they are alleged to have participated in . . . the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(b).

Acts are part of "the same series" if there is a "common thread to each of the defendants." *United States v. Rogers*, 921 F.2d 975, 984 (10th Cir. 1990). In the Tenth Circuit, courts determine whether "a common thread" exists between charges by asking whether proof of the charges involves "common evidence as to various counts."[2] *Id.* This rule is "construed broadly to allow liberal joinder to enhance the efficiency of the judicial system." *United States v. Rodriguez-Aguirre*, 108 F.3d 1228, 1233 (10th Cir. 1997).

Here, joinder is appropriate because the United States will present substantial common evidence to prove both counts. To prove Count II, the United States will show that Defendant Smith was lying when he told the FBI that he had never rigged bids and that he was attempting to

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[2]In a footnote, Defendant Martin claims that this Court may examine only the allegations in the Indictment to determine whether joinder is proper. (Landon Martin's Mot. for Sev. 2 n.1.) There is currently a circuit split on whether it is appropriate to consider information outside the Indictment, and the United States is not aware of any Tenth Circuit opinion directly weighing in on the split. *See United States v. Gallo*, No. 98-CR-338, 1999 WL 9848, at *2 (unpublished) (noting the split and citing cases). (*See* attached Exhibit A.) However, the United States believes that this Court must consider information outside the Indictment because the Tenth Circuit determines the propriety of joinder by examining whether common *evidence* will be presented between the two counts. *Rogers*, 921 F.2d at 984. If the Court relies only on the Indictment, it can only guess at the evidence the United States will introduce to prove each count. By contrast, if the court relies on the representations in this memorandum, the Court can ascertain what evidence the United States will present. Consistent with this approach, courts in other circuits routinely consider the evidence the United States will present, in addition to the allegations in the Indictment. *See United States v. Wilson*, 26 F.3d 142, 153 (D.C. Cir. 1994) ("In determining whether joinder of multiple defendants in a single prosecution is proper, this circuit permits a trial court to consult the indictment as well as any other pretrial evidence offered by the government."); *United States v. McGill*, 964 F.2d 222, 242 (3d Cir. 1992) ("Trial judges may look beyond the face of the indictment to determine proper joinder in limited circumstances. Where representations made in pretrial documents other than the indictment clarify factual connections between the counts, reference to those documents is permitted."); *United States v. Ajlouny*, 629 F.2d 830, 842 (2d Cir. 1980) (in context of Rule 8(a), approving court's reliance in part "on the Government's representation"). Nevertheless, the United States believes that the allegations in the Indictment alone are also sufficient to meet the Rule 8(a) standard.

persuade Rains to lie when he relayed that story to Rains. To show that Defendant Smith's story was false, the government will present evidence that Smith and Rains actually did rig bids – the same evidence the government will use to prove Count I.

Similarly, to explain why Defendant Smith wanted Rains to lie, the government will prove that the two were part of a criminal bid rigging conspiracy – also the same evidence as Count I. *See United States v. Cook*, No. 95-10012, 1995 WL 617642, at *3 (D. Kan. Oct. 19, 1995) (unpublished)[3] (evidence of underlying offense is admissible to show defendant's motive for witness tampering). Because all of the evidence from Count I will be necessary to prove Count II, joinder is both desirable for judicial economy and proper under Rule 8(b).

The Tenth Circuit expressly adopted this reasoning in *United States v. Tynes*, No. 95-5151, 83 F.3d 434 (Table), 1996 WL 195108, at **1 (10th Cir. April 23, 1996) (unpublished)[4]. In *Tynes*, the defendant and a coconspirator were charged with conspiracy, and one of the defendants was also charged with perjury relating to the conspiracy. The Tenth Circuit held that joinder was appropriate, noting that "[t]he fact that [Defendant] Teafatiller was also charged with perjury [and his codefendant was not] does not require severing the trials because the facts necessary to prove guilt as to the [conspiracy charge] included those needed to prove Teafatiller's perjury." *Id.*

Numerous other courts have adopted similar reasoning. For example, in *United States v. Kemp*, 2004 WL 2757867, at *2-*3 (E.D. Pa. Dec. 2, 2004) (unpublished)[5], the court held that

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[3]*See* attached Exhibit B.

[4]*See* attached Exhibit C.

[5]*See* attached Exhibit D.

"joinder is appropriate when defendants are charged with perjury or obstruction of justice in relation to the underlying offenses in an indictment," even when not all defendants are charged with obstruction. *Id.* (holding that joinder of perjury and underlying offense is appropriate "regardless of whether those underlying charges are brought against the defendant charged with perjury or against other defendants"). In that case, several defendants charged with mail fraud and conspiracy were joined with one defendant, who was charged only with "making false statements to the FBI, subsequent to the alleged conspiracy." 2004 WL 2757867, at *1. The court held that joinder was appropriate because the "alleged false statements concern the underlying conspiracy and . . . some proof of the conspiracy is needed to prove the falsity of [the] statements." *Id.* Similarly, in *United States v. Dekle*, two defendants were charged with conspiracy, and a third defendant was charged with aiding and abetting the conspiracy and with perjury relating to the conspiracy. 768 F.2d 1257, 1259 (11th Cir. 1985). Because "[p]roof of the perjury involved proving one phase of the Ragans-Dekle conspiracy," the court held that "[t]he perjury charge and the conspiracy charge arose out of the same transaction, and there was no misjoinder under Rule 8(b)." *Id.* at 1261-62. Indeed, the Fourth, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuit courts of appeals have all adopted reasoning similar to *Tynes*, holding that obstruction of justice or perjury are part of the same series as the underlying crime allegedly hidden.[6]

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[6]*See United States v. Carmichael*, 685 F.2d 903, 909-10 (4th Cir. 1982) (obstruction of justice was part of same series or transaction as the conspiracy it was attempting to hide); *United States v. Crockett*, 514 F.2d 64, 70 (5th Cir. 1975) (sherriff charged only with obstructing investigation into illegal gambling operation properly joined with other defendants who were charged with committing the gambling offenses); *United States v. Swift*, 809 F.2d 320, 322 (6th Cir. 1987) (one defendant charged with perjury about drug conspiracy was properly joined with multiple defendants charged with the drug conspiracy because the perjury "was related to

Defendant Martin argues that joinder is improper because the witness tampering occurred after the antitrust conspiracy had ended and therefore was not an "act in furtherance" of the conspiracy. (Landon Martin's Mot. for Sev. at 6.) But joinder under Rule 8(b) does not require all acts charged in the same indictment to be "acts in furtherance" of the underlying conspiracy. *United States v. Cisneros*, 26 F. Supp. 2d 13, 21 (D. D.C. 1998) (post-conspiracy conduct should not be severed even though it was committed "after the conclusion of the conspiracy" and was "not charged as overt acts of the conspiracy"); *see also United States v. Sweiss*, No. 85-CR-518, 1985 WL 5067, at *1 - *2 (N.D. Ill. Dec. 9, 1985) (unpublished)[7] (joinder is proper "even where other acts outside of the conspiracy are alleged only as to one defendant"). Rather, joinder is proper because the two counts of the Indictment share common evidence.

2. The cases Defendant Martin cites fail to establish that severance is appropriate.

Defendant Martin cites four cases which allegedly establish that he should be tried separately from Defendant Smith. (Landon Martin's Mot. for Sev. 4-6). These cases do not

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[defendant's] involvement in that conspiracy, and evidence establishing his involvement in that conspiracy also established the falsity of his grand jury testimony"); *United States v. Curry*, 977 F.2d 1042, 1050 (7th Cir. 1992) ("perjury counts may be considered part of the same series of acts or transactions as the underlying conduct which was misrepresented"); *United States v. Barney*, 568 F.2d 134, 135 (9th Cir. 1978) (perjury count against one defendant only could be joined with count against second defendant charging offense lied about); *United States v.Tynes*, No. 95-5151, 83 F.3d 434 (Table), 1996 WL 195108, at **1 (10th Cir. April 23, 1996) ("The fact that [Defendant] Teafatiller was also charged with perjury [and his codefendant was not] does not require severing the trials because the facts necessary to prove guilt as to the" conspiracy charge "included those needed to prove Teafatiller's perjury"); *United States v. Dekle*, 768 F.2d 1257, 1261-62 (11th Cir. 1985).

[7] *See* attached Exhibit E.

demonstrate that severance is appropriate because they have been implicitly rejected by *Tynes*, No. 95-5151, 1996 WL 195108, at **1 (10th Cir. April 23, 1996). Moreover, one of them has been implicitly overruled; one does not even support his argument; and two of the cases apply an improper standard for joinder in the Tenth Circuit.

Martin first cites *United States v. Bergner*, 800 F. Supp. 666, 669 (N.D. Ind. 1992), a district court case from the Northern District of Indiana, to demonstrate that he should be severed. (Landon Martin's Mot. for Sev. 4-5). In *Bergner*, the court severed defendants charged with conspiracy from a defendant charged with obstruction relating to the conspiracy because the obstruction was not part of the conspiracy. *Id*. To support its ruling, it noted that the obstruction was "not mentioned anywhere in the overt acts" of the conspiracy and that it occurred after the conspiracy had ended. *Id.* Yet less than three months later, the Seventh Circuit rejected this reasoning, stating that "[c]ounts may be joined under Rule 8(b) even if they could not have been charged as one conspiracy." *United States v. Curry*, 977 F.2d 1042, 1050 (7th Cir. 1992). Although the court did not mention *Bergner* by name, it implicitly overruled *Bergner*, holding that "[a] conspiracy and its cover-up are considered parts of a common plan." *Id.* at 1049. Thus, *Bergner* is no longer good law.

Martin next cites a Seventh Circuit case, *United States v. Velasquez*, 772 F.2d 1348, 1351 (7th Cir. 1985), that is still good law. (Landon Martin's Mot. for Sev. 5.) But *Velasquez* does not support Martin's argument. In *Velasquez*, five defendants were charged with conspiracy, but only four of them were also charged with retaliating against the government informants who exposed the conspiracy. *Id.* at 1350. The indictment alleged that the retaliation was an attempt to cover up the

conspiracy. *Id.* at 1354. The court held that "a conspiracy and its cover-up are parts of a common plan," and it therefore concluded that it had been proper to try the conspiracy charges with the retaliation charges, even though not all defendants were charged with retaliation.[8] *Id.* By this same reasoning, Defendants Smith and Martin are properly joined because Smith is charged with attempting to cover up the conspiracy in which he and Martin participated.

Third, Martin cites a district court case from the Southern District of New York, *United States v. Lech*, 161 F.R.D. 255 (S.D.N.Y. 1995). (Landon Martin's Mot. for Sev. 5-6.) However, *Lech* is not good law in the Tenth Circuit because it applied a different, more demanding standard for joinder than applies in the Tenth Circuit. Different circuits apply substantially different standards to determine whether joinder is proper under Rule 8(b). For example, the Ninth Circuit applies a "logical relationship" test, while the Seventh Circuit vehemently rejects that test. *Compare United States v. Sarkisian*, 197 F.3d 966, 976 (9th Cir. 1999) (applying a "logical relationship" test); *with Curry*, 977 F.2d at 1050 n.1 (rejecting "logical relationship" test). In the Second Circuit where *Lech* was decided, defendants may be joined only if their crimes are "'unified by some substantial identity of facts or participants,' or 'arise out of a common plan or scheme.'" *Lech*, 161 F.R.D. at 256 (citing *United States v. Cervone*, 907 F.2d 332, 340-41 (2d Cir. 1990)). This more demanding standard is not used in the Tenth Circuit, which requires only that the charges involves "common evidence as to various counts." *Compare Rogers*, 921 F.2d at 984. Therefore, *Lech*'s reasoning under the "substantial identity" standard does not apply in this

[8]Although the court did sever a heroin charge, that was because it had no relationship to the cocaine conspiracy.

case.

Finally, Martin relies on a thirty-seven-year-old district court case from the District of Delaware, *United States v. Slawik*, 408 F. Supp. 190, 214 (D.C. Del. 1975). (Landon Martin's Mot. for Sev. 6.) *Slawik* is no longer good law and has been has been subsequently rejected by courts in the same circuit. *United States v. Serafini*, 7 F. Supp. 2d 529, 552 (M.D. Pa. 1998) (citing *Zafiro*, 506 U.S. at 538-39 (1993)) (after it was decided, *Slawik* was "undercut by the more liberal attitude toward joinder that follows from the strong public policy favoring joint trials"). And even if it were good law elsewhere, *Slawik* also did not apply the standard for joinder required by the Tenth Circuit. Thus, *Slawik* should be rejected.

3. Severance under Rule 8(b) is inappropriate.

For all the reasons discussed in sections III.A.1 and III.A.2, Defendant Martin was properly joined with his codefendants, and severance under Rule 8(b) is not appropriate.

B. Severance Under Rule 14

If the Court finds that joinder was proper under Rule 8(b), Defendant Martin next asks the Court to try him separately under Rule 14. (Landon Martin's Mot. for Sev. 6-10.) Severance under Rule 14 "is justified only in the most extreme cases." *Rogers*, 921 F.2d at 984 (10th Cir.); *accord United States v. Olmedo-Cruz*, 197 F.R.D. 498, 501 (D. Utah 2000) (quoting *Rogers*). The Court may grant a severance "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro*, 506 U.S. at 539. And the defendant has the burden of showing

this prejudice. *United States v. Troutman*, 814 F.2d 1428, 1447 (10th Cir. 1987); *United States v. Martinez*, 76 F.3d 1145, 1152 (10th Cir. 1996) ("defendant seeking severance carries the burden of establishing clear prejudice"). Moreover, even if the Court finds that Defendant Martin would be prejudiced at a joint trial, it may order severance only if "less drastic measures, such as limiting instructions" will not cure the prejudice. *See Zafiro*, 506 U.S. at 539. Here, there is no "serious risk" of compromising "a specific trial right" of Defendant Martin, and Martin has failed to establish that any prejudice could not be cured by limiting instructions. Therefore, Defendant Martin's motion should be denied.

1. Martin has no Sixth Amendment right to confront Smith and therefore will not be prejudiced by a joint trial.

Defendant Martin first argues that a joint trial with Defendant Smith would violate his right to confront witnesses through cross examination. (Landon Martin's Mot. for Sev. 7.) Martin claims he would have a right to cross examine Defendant Smith at a joint trial because of the evidence the United States will present to prove the obstruction charge. To prove the witness tampering count against Jon Paul Smith, the United States will call Kenneth Rains to testify that Defendant Smith attempted to persuade him to lie to the FBI and a grand jury. Because the witness tampering involved "statements" by Smith to Rains, Martin asserts that he has a right to cross examine Smith about these statements under *Bruton v. United States*, 391 U.S. 123, 127-28 (1968). Because it is possible that Smith will not take the stand, Martin argues that his right to confront witnesses may be violated.

This argument is meritless. The right to confrontation recognized in *Bruton* is extremely limited. It applies only to out-of-court confessions and only if the confession "expressly

implicat[ed]" a codefendant.[9] *Richardson v. Marsh*, 481 U.S. 200, 208 (1987); *accord Fox v. Ward*, 200 F.3d 1286, 1292 (10th Cir. 2000) (citing *Richardson*). The United States has not obtained a confession from Defendant Smith – and certainly no confession that "expressly implicat[ed]" Defendant Martin. *See id.* Therefore, *Bruton* does not apply.

Moreover, Defendant Martin also does not have a more generalized right to cross examine Defendant Smith at a joint trial because Smith's statements are not hearsay. When a witness testifies about out-of-court statements that are not hearsay, there is no right to cross examine the person who uttered those statements. *United States v. Inadi*, 475 U.S. 387, 398 n.11 (1986) ("admission of nonhearsay 'raises no Confrontation Clause concerns'") (quoting *Tennessee v. Street*, 471 U.S. 409, 414 (1985)); *United States v. Szabo*, 789 F.2d 1484, 1487-88 (10th Cir. 1986) (same); *see also Crawford v. Washington*, 541 U.S. 36, 53 (2004) ("primary object" of Sixth Amendment is to protect against "testimonial hearsay"). Here, Defendant Smith's statements are not hearsay because the United States is introducing them to show that Smith tampered with a witness, not to prove the truth of the statements. Indeed, the United States will attempt to prove that many of Smith's statements – for example, his statement that he did not rig bids – were false. Therefore, Defendant Martin has no right to cross examine Smith.

2. Martin has failed to establish spillover prejudice or that any prejudice could not be corrected by limiting instructions.

Defendant Martin finally argues that his case should be severed because the witness

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[9]In *Bruton*, one defendant confessed and "expressly implicat[ed]" one of his codefendants. *Bruton*, 391 U.S. at 124 n.1. The court held that if the confession was admitted at trial for its truth, the codefendant had a right to cross examine the confessor.

tampering evidence against Defendant Smith will prejudice him. In short, Martin complains that the witness tampering evidence against Smith will be imputed to him simply because "he is alleged to be J.P. Smith's co-conspirator." (Landon Martin's Mot. for Sev. 9.)

To qualify for severance, Martin "has the burden of clearly showing prejudice would result from a joint trial." *United States v. Troutman*, 814 F.2d 1428, 1447 (10th Cir. 1987). "Merely asserting a heightened chance of acquittal or the negative spillover effect of evidence against a co-defendant is insufficient to warrant severance." *Martinez*, 76 F.3d at 1152 (10th Cir. 1996) (internal citation omitted); *accord United States v. Cardall*, 885 F.2d 656, 668 (10th Cir. 1989). Here, Martin's simple assertion that he will be prejudiced simply "because he is alleged to be J.P. Smith's coconspirator" is insufficient. *Martinez*, 76 F.3d at 1152; *Cardall*, 885 F.2d at 668.

Moreover, even if such conclusory allegations were sufficient to show prejudice, a mere showing of prejudice is not sufficient to warrant severance. To qualify for severance, Defendant Martin would have to show that "less drastic measures, such as limiting instructions" will not cure the prejudice. *See Zafiro*, 506 U.S. at 539; *accord United States v. Schmidt*, No. 04-CR-00103, 2006 WL 581155, at *1 (D. Colo. March 7, 2006) (unpublished)[10]. Absent some specific showing to the contrary, this Court must presume that the jury would follow its limiting instructions, *United States v. Eads*, 191 F.3d 1206, 1209 (10th Cir. 1999), and therefore that the limiting instructions would cure any prejudice.

Here, Defendant Martin has failed even to allege – much less prove – that limiting instructions would not be sufficient. Moreover, there is good reason to believe that limiting

[10]*See* attached Exhibit F.

instructions would be effective. As Martin concedes (*see* Landon Martin's Mot. for Sev. 6), the alleged witness tampering occurred well after the conspiracy had ended (although Defendant Smith did not know it at the time he attempted to persuade Rains to provide false information). Moreover, it involved a distinct act; it did not involve Martin; and will make up only a small portion of the United States' proof at trial – mainly, a short portion of testimony by Kenneth Rains and the FBI agent who interviewed Smith. As a result, limiting instructions given prior to Rains's testimony about the telephone call in question are likely to be particularly effective because the jury will be able to "separate the counts and evidence." *Olmedo-Cruz*, 197 F.R.D. at 501. Therefore, severance is inappropriate. *Id.*

IV. Conclusion

Accordingly, Landon Martin's Motion For Severance should be DENIED.[11]

Respectfully Submitted,

s/Diane Lotko-Baker
DIANE C. LOTKO-BAKER
s/Carla M. Stern
CARLA M. STERN
s/Mark D. Davis
MARK D. DAVIS

[11]If the Court finds that severance is required, the United States respectfully requests that the Court order Defendants Smith, Martin, and B&H to be tried together on Count I, and sever only Smith's trial for Count II. Doing so would "serve the interests of justice" by reducing the risk of "scandal and inequity" from inconsistent verdicts. *See Zafiro*, 506 U.S. at 537. In addition, if severance is necessary, the United States requests permission to submit a brief addressing whether it would be appropriate to empanel two juries and hold the severed trials simultaneously. *See Smith v. DeRobertis*, 758 F.2d 1151, 1152 (7th Cir. 1985) (no due process violation from empanelling two juries in criminal case); *In re High Fructose Corn Syrup Antitrust Litigation*, 361 F.3d 439, 441 (7th Cir. 2004) (in civil antitrust case, court has inherent authority to empanel two juries).

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2007, I electronically filed the foregoing United States' Opposition to Defendant Landon Martin's Motion for Severance with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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I hereby certify that I have mailed or served the document or paper to the following non

CM/ECF participants in the manner indicated by the non-participant's name:

None.

Respectfully Submitted,

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